

12/21/99

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

UNITED CATALYST INC.

Employer

and

Case 9-RC-17330

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 369, AFL-CIO

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, <sup>1/</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce does not exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>1/</sup> Although given an opportunity to do so, Petitioner failed to file a brief. However, the Employer timely filed a brief which I have carefully considered in reaching my decision.

5. The Employer, a corporation, is engaged in the manufacture of chemical catalysts at various locations in the United States, including a facility consisting of several buildings at 1200 South 12<sup>th</sup> Street, Louisville, Kentucky, referred to by the parties as the west plant, where it employs approximately 290 production and maintenance employees. There is no history of collective bargaining among any of these employees. <sup>2/</sup>

The Petitioner seeks to represent a unit of nine electrical and electronics employees, referred to by the parties as electricians, employed by the Employer at the west plant. The Employer contends that the unit sought by the Petitioner is not appropriate for purposes of collective bargaining and that any appropriate unit must include all production and maintenance employees at the west plant. The Petitioner does not wish to proceed to an election in any unit except the one for which it has petitioned.

The Employer's west plant department #42 is the maintenance department in which 42 employees are currently employed. Of those 42 employees, 7 are electricians, whom the Petitioner seeks to represent, and the remaining 35 are referred to by the parties as mechanics. Department #42 is headed by Lawrence Lee, maintenance manager. Immediately subordinate to Lee are Clyde Eckert, assistant maintenance manager, who supervises 13 mechanics and 2 stockroom clerks; Stan Jakubowski, maintenance coordinator who supervises 19 mechanics and Danny England, electrical coordinator, who directly supervises the 7 electricians.

The Employer employs nine other maintenance employees at the west plant outside of department #42 who are not under Lee's supervision and who work in different buildings. Of those nine employees, two are electricians who the Petitioner also seeks to represent. These nine employees work in three separate buildings and are immediately supervised by a supervisor assigned to the building in which they work. It appears that the electricians and mechanics at a particular building share the same immediate supervisor. The record does not reflect the type of work performed by the maintenance employees outside of department #42. Finally, all maintenance employees, regardless of their location, have common seniority rights for purposes moving into or out of department #42.

The parties stipulated that the Employer operates five shifts: two 12-hour shifts, designated as A shift and C shift, begin at 6 a.m. and end at 6 p.m. with employees on those shifts working alternating schedules of 3 days on and 4 days off; two additional 12-hour shifts, designated B shift and D shift, work from 6 p.m. to 6 a.m. on the same alternating schedule <sup>3/</sup>

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<sup>2/</sup> The Employer also has a facility located at 1600 Hill Street, Louisville, Kentucky, referred to by the parties as the south plant, where its production and maintenance employees, including electricians, are represented in a single unit by Teamsters Local 89.

<sup>3/</sup> It appears that the purpose of the 12-hour shift schedule is to provide continuous maintenance coverage 24-hours a day and 7 days a week. Because the stipulated schedule would not provide such coverage, I infer that the 12-hour shift employees work 3 days in 1 week and work 4 days the following week for a total of 7 days in 2 weeks as opposed to the 6 days reflected by the stipulation.

and one shift, designated as F shift, works from 6:30 a.m. to 3 p.m. on Monday through Friday. Jakubowski, Eckert and England work on the F Shift.

In department #42 each of the 12-hour shifts has a team of employees who are primarily responsible for handling machine breakdowns. The day breakdown teams have one electrician and three mechanics. The night breakdown teams have one electrician <sup>4/</sup> and one mechanic. The breakdown electricians are supervised by England and the breakdown mechanics are supervised by Jakubowski. England and Jakubowski have no other employees assigned to the 12-hour shifts. In addition to the breakdown teams, the day 12-hour shifts each have a stockroom clerk and a fork lift mechanic under the supervision of Eckert and each of the four 12-hour shifts has a rotary tablet press mechanic assigned to the lathe room and supervised by Eckert.

The remaining 22 employees in department #42 all work F shift. Eckert supervises seven F shift mechanics, two of which are lesser skilled floaters assigned to work as they are needed and the remaining five are assigned to a particular function in the forming, utilities and stock room areas of the plant. Jakubowski supervises 11 F shift mechanics who work on major maintenance projects. England supervises four F shift electricians who primarily perform longer term projects rather than breakdown repairs which is the primary work of the 12-hour shift electricians. The record reflects that the F shift electricians may work together on the same project as F shift mechanics, but does not specifically disclose the nature or extent of such cooperation.

All employees in department #42 are subject to the same wage schedule which consist of four labor grades. It appears that grade 2 is the entry level for mechanics and grade 3 is the entry level for electricians. Ten mechanics and four electricians are in labor grade 4, the highest pay grade. All of the employees in department #42 have identical fringe benefits.

The Employer does not have any minimum educational requirements for any of its maintenance employees and does not require them to possess any licenses or certifications. Job postings for electrical and mechanical positions indicate that entry level maintenance employees are required to complete an approved training course within 1 year and that applicants for positions above the entry level must be enrolled in or have completed an approved training course, but the record does not reflect what constitutes an approved training course or whether this training requirement is enforced. All applicants for maintenance positions are required to undergo a maintenance examination. The examination for mechanics is different from the one administered to electricians. The record discloses that only two of the Employer's current electricians are journeymen.

The Employer permits production employees to bid on vacant maintenance positions and maintenance employees may bid on vacant production jobs. Daniel Bieckert successfully bid from a production position to an electrical position in 1987. Marshall Blunk, who has been in an electrical position since 1993, had twice previously bid into production positions which he occupied for 89 days and 1 day, respectively, before deciding that he did not desire the

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<sup>4/</sup> The B shift electrician position is currently vacant.

production job and returned to his electrical position. Around 1994, Jim Ringle successfully bid from an electrical position to his current mechanical position. In addition, the record reflects that most of the Employer's current mechanics obtained their maintenance positions by bidding on them from production jobs. However, most of the Employer's current electricians were hired as new employees into their electrical positions.

The Employer generally applies plant-wide seniority in selecting employees for layoff. However, because electricians are deemed essential to the Employer's operations, they are not subject to plant-wide seniority and it would appear that they constitute a separate seniority group for purposes of layoff. It appears that the electricians are the only employees who are not subject to plant-wide seniority. This application of the Employer's seniority policy in a spring 1999 reduction-in-force resulted in four mechanics being bumped into production positions, while two less senior electricians retained their positions in maintenance. Finally, electricians are scheduled for vacation separately from mechanics and the Employer will permit only one electrician to be off on vacation at any one time.

The 12-hour night shift employees work at times when no maintenance supervision is present at the plant as do 12-hour day shift maintenance employees when they work weekends. In these situations, the maintenance employees receive direction from production coordinators as to the priority of their work.

Detailed record evidence as to the actual work performed by the department #42 employees is limited primarily to their work in breakdown situations. It appears that the breakdown teams are the Employer's first line of defense against breakdowns. However, the record reflects that 12-hour shift electricians occasionally work on longer term projects. Moreover, the F shift electricians, who are not assigned to the breakdown teams, may occasionally handle breakdowns.

When a breakdown occurs, the involved production employee or supervisor will normally communicate by radio or pager with a member of the breakdown team, either an electrician or a mechanic depending on production's assessment <sup>5/</sup> of the problem, to request assistance. Most breakdowns involve both electrical and mechanical problems, resulting in both electricians and mechanics working together to solve them. In any breakdown situation, the initial task for the breakdown team is to troubleshoot and diagnose the problem and to determine how it may be corrected. This diagnosis normally involves both electrical and mechanical functions in which an electrician may perform or assist in mechanical functions. Once the source of the problem is determined to be electrical, mechanical or both, the electrician will normally work on the electrical aspects and the mechanic will generally perform the mechanical portions of the job.

The record indicates that most of the Employer's machinery is powered by electricity and in order to diagnose or repair a mechanical problem, it is often necessary, because of safety reasons, for an electrician to disconnect electrical power from the machine before mechanical work can be performed and to reconnect the power when the repair is completed. In addition,

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<sup>5/</sup> The record reflects that this preliminary assessment is understandably not always accurate.

mechanics cannot test the success of their repairs without power, so an electrician is necessary to connect power for testing purposes. Accordingly, in those circumstances, the services of electricians are required for only a small portion of the total time spent by mechanics on the breakdown. In such situations, the electrician may move on to other work and return as needed, or stand idly by watching the mechanics do their work or assist the mechanics in the performance of mechanical work. For safety reasons, mechanics are prohibited from performing most electrical work, but electricians are permitted to perform mechanical work. The record demonstrates that maintenance personnel recognize a distinction between electrical and mechanical work and it appears that for the most part, electricians limit themselves to electrical work while mechanics limit themselves to mechanical work. Dan Bieckert, a night shift breakdown electrician, estimated that 90 percent of his work was electrical and 10 percent was mechanical. The record reflects that more breakdowns occur on day shift than at night and night shift breakdown electricians have more time in which they are not occupied with electrical functions and are able to render more assistance to mechanics.

#### ANALYSIS:

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *The Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994); *Purity Food Stores*, 160 NLRB 651 (1966). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only determine whether the employees sought by Petitioner here constitute an appropriate craft unit.

In view of the fact that the electricians work in the same department, share the same second level supervision, are subject to the same wage schedule and fringe benefit policies as the mechanics and that the electricians and mechanics work together in performing integrated functions, I find that the record fails to establish, on the basis of traditional community of interest considerations, that the unit sought by Petitioner is appropriate. Applying community of interest standards, it would appear that any appropriate unit in which the electricians might be included could be no smaller than a unit of department #42 employees, the department in which they work. <sup>6/</sup> Because the employees sought by Petitioner are only a portion of the Employer's maintenance department, I find such employees, based on the Board's traditional standards, do not have a distinct community of interest separate from other maintenance employees. See, *Dundee Cement Company*, 170 NLRB 422, 424 (1968).

It appears, however, that Petitioner is seeking to represent the electricians on the basis that they constitute a true craft unit. In *Burns and Roe Services Corporation*, 313 NLRB 1307

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<sup>6/</sup> Because the issue is not before me, I make no comment nor finding as to whether a unit of department #42 employees might, in fact, be appropriate.

(1994), the Board found that a unit of electricians separate from other maintenance employees was appropriate because the electricians constituted a separate appropriate craft unit. The Board held that a craft unit is one consisting of a distinct and homogeneous group of skilled journeymen craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. In determining whether a group of employees constitutes a separate appropriate craft unit, the Board examines whether the employees participate in a formal training or apprenticeship programs, whether their work is functionally integrated with the work of other excluded employees, whether the duties of the employees overlap the duties of excluded employees, whether the Employer assigns work according to need rather than along craft jurisdictional lines and whether the employees sought share common interests with other employees including wages, benefits and cross-training. *Burns and Roe Services Corporation*, supra at 1308; *Mallinckrodt Chemical Works Uranium Division*, 162 NLRB 387 (1966) (The Board set for the criteria necessary for craft severance. The Board uses some elements for determining appropriateness of craft unit in unrepresented setting.) *Monsanto Company*, 172 NLRB 1461 (1968); *Burns and Roe Services Corporation*, supra. See also, *Shaus Roofing and Mechanical Contractors, Inc.*, 323 NLRB 781 (1997). Where the evidence is inconclusive as to the true craft status of a group of employees, a unit consisting of that group will be found inappropriate. *Dundee Cement*, supra. at 424; *Proctor and Gamble Paper Products Company*, 251 NLRB 492, 494 (1980). Thus, the burden of proof lies with the party asserting true craft status.

In analyzing the issue of craft status, I note that seven of the electricians sought by Petitioner are separately supervised by England, who does not supervise any other employees. However, the electricians work in the same department and share the same second level supervision with other maintenance employees. The electricians are not required to undergo any formal training or apprenticeship program, their work, particularly in breakdown situations, is clearly functionally integrated with the work of the mechanics, their duties in troubleshooting and diagnosing breakdown situations overlap those of the mechanics and they enjoy the same wages and benefits as the other maintenance employees. Although the Employer apparently does not train mechanics in electrical work or electricians in mechanical work, the record reflects that they work together in repair teams and occasionally electricians assist mechanics in performing mechanical work. In situations similar to the instant case, where electricians are not required to undergo formal training or apprenticeship programs and where they work in teams with mechanical employees on troubleshooting, diagnosing and repairing breakdowns (sometimes under the direction of production supervision), the Board has found that electricians do not constitute a separate appropriate craft unit. *Proctor and Gamble*, supra.; *Dundee Cement*, supra.; *Timber Products Company*, 164 NLRB 1060 (1967). Moreover, Petitioner seeks to represent two electricians employed outside of department #42 thus crossing departmental lines. *Proctor and Gamble*, supra at 494. Although some indicia supporting a conclusion that the electricians consist of a craft group are present here, such criteria is outweighed by factors militating against the appropriateness of a craft unit.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in the Employer's brief, I find that the unit sought by Petitioner is not appropriate, as a craft group or any other basis, for purposes of collective bargaining.

Inasmuch as the Petitioner does not desire to proceed to an election in any other unit, I shall dismiss the petition.

**ORDER**

IT IS HEREBY ORDERED that the petition in this matter be, and it hereby is, dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **January 4, 2000**.

Dated at Cincinnati, Ohio this 21<sup>st</sup> day of December 1999.

*/s/ [Richard L. Ahearn]*

Richard L. Ahearn, Regional Director  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

440-1760-9100  
440-1760-9167-2400